

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B07

PLR-134045-06

Date:

November 09, 2006

### Legend

X =  
S =  
O =  
W =  
\$w =  
\$x =  
\$y =  
\$z =  
Date a =  
Date b =  
Date d =  
Date e =

Gentlemen:

This responds to your letters requesting a ruling that the escrow account described below is a qualified settlement fund under § 1.468B-1 of the Income Tax Regulations. For the reasons described below, the escrow account is a qualified settlement fund for federal income tax purposes under § 1.468B-1.

### FACTS

X is a holding company for two operating businesses. One of its subsidiaries, S, is a manufacturer of equipment and a provider of associated systems. S also provides equipment rentals, communications products, and other services.

On Date a, O filed a class action lawsuit against X and its affiliates in the United States District Court (Court) alleging monopoly maintenance, attempted monopolization, and illegal restraints of trade in violation of Sections 1 and 2 of the Sherman Antitrust Act and Section 3 of the Clayton Act. O claimed that it and the alleged class sustained injury caused by S's discounting practices, which allegedly harmed competition and resulted in higher prices. O sought actual monetary damages on behalf of the purported class in excess of \$w dollars, trebling of any such damages, recovery of attorney fees and costs, and injunctive relief.

On Date b, a settlement agreement was entered into among X, S, O, and O's attorneys. The Court subsequently approved the settlement agreement on Date d. Pursuant to the terms of the settlement agreement, X is required to pay the sum of \$y dollars into an escrow account (Account) within 30 days of preliminary approval of the settlement agreement. Within thirty days of final approval of the settlement agreement, X is required to deposit the remaining \$z dollars (subject to certain adjustments) into the Account. The amounts deposited in the Account will be maintained in a separate and completely unrelated account in the dominion and control of W and will be completely segregated from other assets of X and its affiliates. The amounts deposited in the Account may be distributed to the participating class members pursuant to the related plan of distribution and may be used for payment of any attorneys' fees, costs, expenses or other disbursements, including any incentive award for the class representative(s), as the Court may order and as is permitted under the agreement governing the Account.

On Date e, the Court issued its final approval of the settlement agreement and plan of distribution. Under the terms of its final approval, the Court retained exclusive jurisdiction over the settlement and settlement agreement during the administration of the Account.

### LAW AND ANALYSIS

Section 468B(g) of the Internal Revenue Code provides, in part, that nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. Section 468B(g) authorizes the issuance of regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise. Sections 1.468B-1 through 1.468B-5 regarding qualified settlement funds were issued pursuant to § 468B(g).

Section 1.468B-1(a) provides that a qualified settlement fund is a fund, account, or trust that satisfies all three requirements of § 1.468B-1(c). First, § 1.468B-1(c)(1) requires

that the fund, account, or trust is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of that governmental authority. Second, § 1.468B-1(c)(2) requires that the fund, account, or trust is established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event (or related series of events) that has occurred and that has given rise to at least one claim asserting liability (i) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980; (ii) arising out of a tort, breach of contract, or violation of law; or (iii) designated by the Commissioner in a revenue ruling or revenue procedure. Third, § 1.468B-1(c)(3) provides that the fund, account, or trust must be a trust under applicable state law, or its assets must be otherwise segregated from other assets of the transferor (and related persons). Finally, § 1.468B-1(h)(2) provides that if a fund, account, or trust is established to resolve or satisfy claims described in § 1.468B-1(c)(2) as well as other types of claims (i.e., non-allowable claims) arising from the same event or related series of events, the fund is a qualified settlement fund.

Based on the facts presented, the three requirements of § 1.468B-1(c) are satisfied and, as such, the Account is a qualified settlement fund for federal income tax purposes. First, the Account has been approved pursuant to an order of the Court dated Date d, over which the Court retains jurisdiction during the Account's complete administration. See § 1.468B-1(c)(1). Second, the Account was established to resolve or satisfy claims brought by the class members against X and its affiliates for damages allegedly sustained as a result of violations of federal antitrust law. See § 1.468B-1(c)(2). Third, the Account is maintained in a separate and completely unrelated account in the dominion and control of W and is segregated from other assets of X and its affiliates. See § 1.468B-1(c)(3). Finally, the fact that other claims will be paid by the Account (e.g., class counsel attorneys' fees) does not prevent the Account from being treated as a qualified settlement fund. See § 1.468B-1(h)(2).

#### HOLDING

The Account is a qualified settlement fund for federal income tax purposes under § 1.468B-1.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the requested ruling, it is subject to verification on examination.

Sincerely,

John P. Moriarty  
Senior Technician Reviewer, Branch 7  
(Income Tax & Accounting)